REMARKS

The present Amendment amends claims 1-34 and 36-38. Therefore, the present application has pending claims 1-34 and 36-38.

Response to Arguments: Claims 9-16 and the Examiner's Official Notice

The Examiner is reminded of **MPEP 2144.03**, which provides the procedure for relying on common knowledge or taking Official Notice. **MPEP 2144.03, Part A** is reproduced below for the Examiner's convenience:

> **A. Determine When It Is Appropriate To Take Official Notice Without Documentary Evidence To Support The Examiner' s Conclusion**
>
> Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR **1.113**. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). In *Ahlert*, the court held that the Board properly took judicial notice that "it is old to adjust intensity of a flame in accordance with the heat requirement." See also *In re Fox*, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973) (the court took "judicial notice of the fact that tape recorders commonly erase tape automatically when new 'audio information' is recorded on a tape which already has a recording on it"). In appropriate circumstances, it might not be unreasonable to take official notice of the fact that it is desirable to make something faster, cheaper, better, or stronger without the specific support of documentary evidence. Furthermore, it might not be unreasonable for the examiner in a first Office action to take official notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps"

which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *Ahlert*, 424 F.2d at 1092, 165 USPQ at 421.

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde,* 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko,* 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings."). While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." *Id.* at 1385-86, 59 USPQ2d at 1697. As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002) (In reversing the Board's decision, the court stated "'common knowledge and common sense' on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated by the Administrative Procedure Act. Conclusory statements such as those here provided do not fulfill the agency's obligation....The board cannot rely on conclusory statements when

dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.").

Regarding claims 9-16, the present invention as recited in those claims provides a step of prolonging an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at the terminal apparatus. The Examiner concedes that Archibald does not disclose this feature. However, the Examiner gives *Official Notice* that "compensating users for viewing advertisements was well known to one of ordinary skill at the time the invention was made; and it would have been obvious to compensate the user with incentives related to receiving digital content" (see paragraph 15 of the Office Action). As previously discussed in the Amendments filed on January 20, 2006 and June 29, 2006, Applicants traverse this finding, and submit that a step of prolonging an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at the terminal apparatus, in a method as claimed, is not well known in the art.

If Official Notice is taken of a fact, and is unsupported by documentary evidence, the technical line of reasoning underlying the Examiner's decision to take such notice must be clear and unmistakable. Applicants submit that it is not clear and unmistakable that one would be motivated to modify Archibald so as to prolong an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at a terminal apparatus, in the manner claimed. (See *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001) (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)).

Therefore, Archibald fails to teach or suggest "a step of prolonging an audiovisual time of digital contents if an electronic advertisement is viewed and listened to at the terminal apparatus capable of viewing and listening to the digital contents" as recited in dependent claims 9-16.

35 U.S.C. §102 Rejections

Claim 34 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,825,883 to Archibald et al ("Archibald"). This rejection is traversed for the following reasons. Applicants submit that the features of the present invention as now more clearly recited in claim 34 are not taught or suggested by Archibald, whether taken individually or in combination any of the other references of record. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Amendments were made to the claims to more clearly describe features of the present invention. Specifically, amendments were made to the claims to more clearly describe that the present invention is directed to a method for calculating a copyright fee of digital contents as recited, for example, in independent claim 34.

The present invention, as recited in claim 34, provides a method for calculating a copyright fee of digital contents. The method includes counting the number of pages displaying digital contents by a shop side distribution apparatus. The method also includes calculating an audiovisual fee in accordance with the number of displayed pages by a shop side distribution apparatus, and collecting audiovisual times for each of the digital contents viewed and/or listened to at the terminal apparatus by the shop side distribution apparatus. Also included in the method is a step of transmitting the audiovisual fee and the audiovisual times to a

center by the shop side distribution apparatus. The method also includes calculating a total amount of the transmitted audiovisual fee for all shops, by the center, and calculating a total amount of the transmitted audiovisual times for each of the digital contents for all shops, by the center. The method further includes a step of calculating a copyright fee for each of the digital contents, by the center, in accordance with the calculated audiovisual fee and total amount of audiovisual times. The prior art does not disclose all of these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record, particularly Archibald, whether taken individually or in combination with the other references of record.

Archibald discloses a method and apparatus that accounts for the usage of digital applications. However, there is no teaching or suggestion in Archibald of the method of calculating a copyright fee of digital contents, as recited in independent claim 34.

Archibald's method and apparatus keeps track of the use of digital applications on an as-used basis. In this way, a publisher may be compensated for each use of its digital application rather than by a lump sum purchase price. Archibald's method and apparatus maintains a user payment database 100 (Fig. 3). The user payment database 100 includes a plurality of words for users 106 and 108. Within each user record is a plurality of publisher records 110 and 112, and within each publisher record 110 and 112 is an application identification field 114, a price field 116, a use unit field 118, an amount used field 120, and an amount owed field 122. As illustrated in Fig. 3, user #1 (item 152) acquired two programs (programs 1

and 2) from publisher #1 (item 110). Publisher #1 has established that, for this user, program 1 costs 10 cents per unit of use, where the unit of use is 5 minutes. The user used the program for 60 minutes, which results in 12 units of use. Therefore, the amount owed to the publisher is $1.20. (See generally, column 7, lines 32-67). In this way, Archibald's method is directed to charging a user based solely on the number of times the user viewed and/or listened to the contents.

In contrast to Archibald, the present invention charges based on the amount of time (i.e., how long) the contents are used rather than the number of times the contents are used. That is to say, in the present invention, the charge for a user is independent from the number of times a user viewed and/or listened to the contents.

Features of the present invention, as recited in claim 34 include counting, by a shop side distribution apparatus, the number of pages displaying contents, and calculating, by a shop side distribution apparatus, an audiovisual fee in accordance with the number of displayed pages. Archibald does not disclose this feature. To support the assertion that Archibald discloses these features, the Examiner cites columns 3 to column 4, column 8, lines 38-56, and claims 1-4. Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8, lines 38-56). Contrary to the Examiner's assertions, none of these bases of use disclosed in Archibald include the number of displayed pages, as claimed. In the response to arguments (page 8 of the Office Action), the Examiner persists in the position that the "number of access or invocations" is equivalent to counting the

number of pages displaying digital contents, as claimed. Applicants disagree. The number of accesses or invocations is not the same as the number of pages displaying digital contents. For example, counting the number of accesses or invocations results in a count of the number of times a user either accesses or invokes digital contents. On the other hand, counting the number of pages that display digital contents results in a count of the number of applicable pages. **A number of times a user accesses or invokes digital contents is not the same as the number of applicable pages.** *These are two completely different and distinct features, and if the Examiner persists in this rejection, Applicants respectfully request the Examiner to more specifically explain how a number of pages is equivalent to a number of times accessed.* In addition to failing to teach a step of counting the number of pages displaying digital contents, Applicants submit that Archibald fails to teach or suggest where a shop side apparatus counts the number of pages, in the manner claimed, and Archibald further fails to teach or suggest calculating, by the shop side apparatus, an audiovisual fee based on the number of displayed pages, in the manner claimed.

Another feature of the present invention, as recited in claim 34, includes calculating, by the center, a copyright fee for each of the digital contents, in accordance with the calculated audiovisual fee and total amount of audiovisual times. Archibald does not disclose this feature. As previously discussed, Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8,

lines 38-56). None these bases for calculating a fee in Archibald is the same as calculating a copyright fee for each of the digital contents by a center in accordance with the calculated total amount of the audiovisual fee and the audiovisual times, as claimed.

Therefore, Archibald fails to teach or suggest "counting the number of pages displaying digital contents, by a shop side distribution apparatus" and "calculating an audiovisual fee in accordance with the number of displayed pages, by the shop side distribution apparatus" as recited in claim 34.

Furthermore, Archibald fails to teach or suggest "calculating a copyright fee for each of the digital contents, by the center in accordance with the calculated audiovisual fee and total amount of audiovisual times" as recited in claim 34.

Therefore, Archibald does not teach or suggest the features of the present invention as recited in claim 34. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §102(b) rejection of claim 34 as being anticipated by Archibald are respectfully requested.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of claim 34.

35 U.S.C. §103 Rejections

Claims 1-33 and 36-38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Archibald in view of U.S. Patent No. 6,813,608 to Baranowski. This rejection is traversed for the following reasons. Applicants submit that the features of the present invention, as now more clearly recited in claims 1-33 and 36-38, are not taught or suggested by Archibald or Baranowski, whether taken

individually or in combination with each other in the manner suggested by the Examiner. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Amendments were made to the claims to more clearly describe the features of the present invention. Specifically, the claims were amended to more clearly describe that the present invention is directed to a method of calculating a copyright fee of digital contents, a system for calculating a copyright fee of digital contents, and a computer readable storage medium storing a program for calculating a copyright fee of digital contents as recited, for example, in independent claims 1, 33, 36, and 37.

The present invention, as recited in claim 1, and as similarly recited in claims 33, 36, and 37, provides a method for calculating a copyright of digital contents. The method includes a step of distributing digital contents from a center side distribution apparatus of a center to a terminal apparatus of a shop via a shop side distribution apparatus. According to the present invention, a plurality of shops are connected to the center, and a plurality of terminal apparatuses are connected to the each shop. The method also includes a step of allowing digital contents capable of being accessed at a limited place to be viewed and/or listened to during a limited time period, where the limited time period includes time elapsed between entering and exiting the limited place. The method further includes a step of collecting an audiovisual fee according to the length of the limited time period, by the shop side distribution apparatus. Also included in the method is a step of collecting audiovisual times for each of the digital contents viewed and/or listened to at the terminal apparatus, by the shop side distribution apparatus, by totaling audiovisual records of

digital contents of respective users for a plurality of users and for each of the digital contents. The method also includes a step of transmitting the audiovisual fee and the audiovisual times to the center by the shop side distribution apparatus. The method further includes a step of calculating a total amount of the transmitted audiovisual fee for all shops, by the center, and a step of calculating a total amount of the transmitted audiovisual times of the digital contents for all shops, by the center. Furthermore, the method includes a step of calculating a copyright fee for each of the digital contents by the center in accordance with the calculated total amount of the audiovisual fee and the audiovisual times. The prior art does not teach or suggest all of these features.

The above described features of the present invention, as now more clearly recited in the claims, are not taught or suggested by any of the references of record. Specifically, the features are not taught or suggested by either Archibald or Baranowski, whether taken individually or in combination with each other.

As previously discussed, Archibald discloses a method and apparatus that accounts for the usage of digital applications. However, there is no teaching or suggestion in Archibald of the a method of calculating a copyright fee of digital contents, a system for calculating a copyright fee of digital contents, and a computer readable storage medium storing a program for calculating a copyright fee of digital contents, as recited in independent claims 1, 33, 36 and 37.

Features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include calculating, by the center, a total amount of the transmitted audiovisual fee for all of a plurality of shops, and calculating, by the center, a total amount of the transmitted audiovisual times of the digital contents for

all shops. Archibald does not disclose this feature. For example, Archibald does not disclose a plurality of shops. Therefore, it follows that Archibald does not teach calculating a total amount of the transmitted audiovisual fee for all of a plurality of shops, or calculating a total amount of the transmitted audiovisual times of the digital contents for all of the shops, in the manner claimed.

Another feature of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, includes calculating a copyright fee for each of the digital contents by the center in accordance with the calculated total amount of the audiovisual fee and the audiovisual times. Archibald does not disclose this feature. As previously discussed, Archibald discloses calculating a fee according to a usage based on time or time increments. Alternatively, "usage or consumption may be based on any one or a combination of several different use criterion, such as time, time increments, functionality, resource, number of accesses or invocations, [and] amount of database access" (column 8, lines 38-56). None these bases for calculating a fee in Archibald is the same as calculating a copyright fee, for each of the digital contents, based on the calculated total amount of the audiovisual fee and the audiovisual times, as in the present invention.

Therefore, Archibald fails to teach or suggest "a step of calculating a total amount of the transmitted audiovisual fee for all shops, by the center" and "a step of calculating a total amount of the transmitted audiovisual times of the digital contents for all of a plurality of shops, by the center" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

Furthermore, Archibald fails to teach or suggest "a step of calculating a copyright fee for each of the digital contents by the center in accordance with the

calculated total amount of the audiovisual fee and the audiovisual times" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

The above noted deficiencies of Archibald are not supplied by any of the other references of record, namely Baranowski, whether taken individually or in combination with each other. Therefore, combining the teachings of Archibald and Baranowski in the manner suggested by the Examiner still fails to teach or suggest the features of the present invention as now more clearly recited in the claims.

Baranowski discloses a system and method for enhancing user experience in a wide-area facility having a distributed, bounded environment. However, there is no teaching or suggestion in Baranowski of the a method of calculating a copyright fee of digital contents, a system for calculating a copyright fee of digital contents, and a computer readable storage medium storing a program for calculating a copyright fee of digital contents as recited in independent claims 1, 33, 36, and 37.

Baranowski teaches a wireless system, including a system controller, and a portable device with wireless connection to the wireless system. The wireless system can be used to link customers to the operations of a business. This link can be used to increase customer efficiency in the use of the business, including scheduling appointments to avoid lines, viewing customer locations on an interactive map, and tracking the location of other customers traveling in a group. This link can also allow the customer to initiate searches for information or products and to make electronic purchases. The business can use the link to send information or advertisements directly to select customers.

Features of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, include calculating, by the center, a total amount of

the transmitted audiovisual fee for all of a plurality of shops, and calculating, by the center, a total amount of the transmitted audiovisual times of the digital contents for all shops. Baranowski does not disclose this feature. For example, Baranowski does not disclose a plurality of shops. Therefore, it follows that Baranowski does not teach calculating a total amount of the transmitted audiovisual fee for all of a plurality of shops, or calculating a total amount of the transmitted audiovisual times of the digital contents for all of the shops, in the manner claimed.

Another feature of the present invention, as recited in claim 1, and as similarly recited in claims 33, 36 and 37, includes calculating a copyright fee for each of the digital contents by the center in accordance with the calculated total amount of the audiovisual fee and the audiovisual times. Baranowski does not disclose this feature, and the Examiner does not rely upon Baranowski for teaching a step of calculating a copyright fee, in the manner claimed.

Therefore, Baranowski fails to teach or suggest "a step of calculating a total amount of the transmitted audiovisual fee for all shops, by the center" and "a step of calculating a total amount of the transmitted audiovisual times of the digital contents for all of a plurality of shops, by the center" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

Furthermore, Baranowski fails to teach or suggest "a step of calculating a copyright fee for each of the digital contents by the center in accordance with the calculated total amount of the audiovisual fee and the audiovisual times" as recited in claim 1, and as similarly recited in claims 33, 36 and 37.

Both Archibald and Baranowski suffer from the same deficiencies, relative to the features of the present invention. Therefore, combining the teachings

Baranowski with Archibald, in the manner suggested by the Examiner, does not render obvious the features of the present invention, as now more clearly recited in claims 1-33 and 36-38. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §103(a) as being unpatentable over Archibald in view of Baranowski are respectfully requested.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of claims 1-33 and 36-38.

In view of the foregoing amendments and remarks, Applicants submit that claims 1-34 and 36-38 are in condition for allowance. Accordingly, early allowance of claims 1-34 and 36-38 is respectfully requested.

To the extent necessary, Applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of Mattingly, Stanger, Malur & Brundidge, P.C., Deposit Account No. 50-1417 (referencing attorney docket no. 500.40470X00).

Respectfully submitted,

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